BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Responsible	)	CC Docket No. 98-146
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

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SUMMARY

The Commission is faced with a clear choice: regulate ILECs in a manner inconsistent with the pro-competitive, deregulatory, intent of the Telecommunications Act of 1996, or exercise the independent regulatory forbearance authority Congress provided the Commission in Section 706 to ensure that incentives for ILECs to make the business decisions to invest in advanced telecommunications infrastructures and services become a reality. Comments filed in this proceeding raise no new arguments to support relegating ILECs to second-tier participants in the competitive, high-speed data and Internet markets. Indeed, the evidence is irrefutable that non-ILECs control both the Internet backbone and ISP markets. Similarly, competition to build new advanced transmission links continues at unprecedented levels. In short, ILECs are not a bottleneck to competition in these markets. The Commission should exercise the independent authority Congress provided in Section 706 of the Act to ensure that the public realizes the benefits of access to high-speed data and Internet services at competitive prices - - benefits which only market-driven competition, not government regulations, can provide.

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INTRODUCTION

The United States Telephone Association ("USTA") hereby files its reply comments in response to the Commission's August 7, 1998 Notice of Inquiry ("NOI") and the comments filed in the above-referenced proceeding. USTA is the principal trade association of the incumbent local exchange carrier industry ("ILECs").

Section 706 of the Telecommunications act of 1996 ("Act") establishes an affirmative mandate for the Commission and state PUC's to create incentives for the deployment of advanced telecommunications networks and services by removing regulatory barriers to infrastructure investment and by promoting competition. Congress did not provide instructions for the Commission to create more regulations to further competition in advanced data and Internet

markets. In fact, the Act and Section 706 were intended by Congress to be pro-competitive, deregulatory, instruments that would drive market-based competition and would lead to infrastructure investments, innovation, public access to expanded choices, and lower prices, while expanding the nation's technological edge in global markets. Apparently, the regulatory forbearance clearly expressed by Congress in Section 706 has been overlooked by those who would write about the public benefits of competition, while concurrently proposing that more regulations be erected by the Commission in the name of protecting the public interest, but which simply place ILECs at a competitive disadvantage in the high-speed, advanced telecommunications data and Internet markets.

Government regulations in competitive markets like the data and Internet markets, stifle competition. Section 706 presents the Commission with a unique opportunity to try something wholly different from imposing regulations upon ILECs, which serve as disincentives to their deployment of advanced telecommunications networks and services, to meet the ever increasing public demand for greater bandwidth capacity and the products and services made possible from deployment of advanced telecommunications networks. What is undeniable is that the high-speed data and Internet markets were created absent government regulation, not because of it. Moreover, the so-called last-mile monopoly that ILECs have to customers and end-users has not, will not, and cannot impede, as alleged by competitors seeking protection from competition, the continued expansion of advanced telecommunications networks and services. Also, unquestioned is that the public's demand -- customers and end users -- for increased bandwidth capacity, through advanced telecommunications network infrastructures and services,

has not been, nor can it be, met solely by those competitors seeking to enhance their existing competitive advantages by burdening ILECs with administratively burdensome and costly regulations that serve to deny the public the benefits of competition.

USTA urges the Commission to forgo imposition of new regulations. By adopting a policy of regulatory forbearance from regulating ILEC participation in the extremely competitive high-speed data and Internet markets, the public will be the beneficiary of greater choices in products and services, lower prices, technological innovation, and access to increased bandwidth capacity. In short, the benefits of market-driven competition cannot be matched by government regulations which service only to stifle competition, create barriers to infrastructure investment establish artificially high prices for high-speed data and Internet services, impose costly and administratively burdensome multiple systems of regulations, while protecting some and punishing ILECs who seek to compete on regulatory and competitively neutral playing fields. This Commission can secure the nation's future technological, economic, and global competitiveness by investing in forward-looking public policy that accentuates reliance on market-forces to drive infrastructure investment by ILECs in advanced telecommunications networks and services. In recently remarks, Chairman Kennard has championed USTA's bedrock belief in free market forces as the only driver of competition:

> ***I have an abiding and unabashed faith in the power of the free market to deliver the best, most innovative and cheapest communications services. We cannot legislate or regulate to stop technological change. And we cannot legislate or regulate the***

power of the market to drive change.[1]

The Clinton Administration has also spoken favorably about the benefits of competition over government regulations. A recent report on competition in the data and Internet markets by the Department of Commerce concluded:

> ***Greater competition in telecommunications ... should be encouraged so that high-bandwidth services are brought to homes and offices around the world and so that the new converged market place of broadcast, telephony and the Internet operate based on laws of competition and consumer choice rather than those of government regulation.***[2]

In a letter to Chairman Kennard, the Assistant Secretary for Commerce and Director of the National Telecommunications Information Administration ("NTIA") remarked:

> ***The Administration has long believed that '[o]ne of the most effective ways to promote investments in our nation's information infrastructure is to introduce or further expand competition in communications and information markets.' Competition will lead to lower prices, greater consumer choice, and faster deployment of advanced telecom networks and services.***[3]

USTA recommends that the Commission demonstrate the Chairman's faith in the free market by allowing that very market to drive infrastructure investment by ILECs and others in

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[1] Remarks of William E. Kennard, Chairman, Federal Communications Commission before the Congressional Economic Leadership Institute, June 17, 1998, <http://www.fcc.gov/Speeches/Kennard/spwek817.html>

[2] *The Emerging Digital Economy* at 50-51, April 1998.

[3] Letter from Assistant Commerce Secretary and Director of NTIA Larry Irving to William E. Kennard, Chairman Federal Communications Commission, July 17, 1998, <http://www.ntia.doc.gov/ntiahome/fccfillings/sec706.htm>

advanced telecommunications networks and services. Let competition, not government regulations, determine without regard to preconceived ideas, how best to meet the public's demand for high-speed data and Internet services. By boldly going where no Commission has gone before - - regulatory forbearance of ILEC investments in advanced telecommunications networks and services - - the Commission will travel the last mile towards ensuring that the public will reap the rewards of market-drive competition intended by the Act.

I. SECTION 706 REVIEW SHOULD NOT BE USED AS AN OPPORTUNITY TO LITIGATE THE LOCAL COMPETITION ORDER

A number of parties seem interested only in using this proceeding to repeat unsubstantiated arguments that ILECs are not meeting their obligations to open the local exchange market to competition.[4] Conversely, it is argued that the market for Internet backbone services is competitive.[5]

USTA's position is that public access to advanced data and Internet networks and services is not placed at risk should ILECs be permitted to deploy such networks and services without having to meet Section 251 obligations or separate subsidiary requirements. Even assuming, *arguendo*, that the demand for increased bandwidth capacity is being met,[6] there is no basis for creating regulatory barriers to ILECs making business decisions to invest in deploying

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[4] *See, e.g., AT&T Comments* at 23-32; *MCI/WorldCom Comments* at 22-24.

[5] *MCI/WorldCom Comments* at 20.

[6] *Id.*

additional bandwidth capacity. More competition can only serve the public's interest in accessing high-speed data and Internet services at competitive prices.

The Commission's Section 706 review should not be misused as a proceeding to raise arguments regarding requirements under the Act applicable to ILEC wireline networks where competition is clearly evident in the high-speed data and Internet markets.

II. COMPETITION IS NECESSARY TO MEET THE BANDWIDTH CAPACITY SHORTAGE

MCI/WorldCom's arguments that there is no data and Internet traffic congestion to warrant regulatory forbearance of ILEC deployment of advanced telecommunications networks and services is inconsistent with prior statements.[7] According to a UUNET executive and chief scientist Mike O'Dell ***The capacity crunch is real and will continue for quite some time.***[8] UUNET is a MCI/WorldCom subsidiary and is one of the largest Internet backbone providers in the world. Moreover, the demand for bandwidth capacity continues to grow at unprecedented levels with UUNET projecting that network traffic is doubling every 100 days.[9]

The need for greater bandwidth capacity is further demonstrated by the market factors

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[7] *MCI/Worldcom Comments* at 20 ("Contrary to ILEC allegations, there is no shortage of long-haul backbone capacity outside local networks nor is there any evidence of under investment in Internet facilities.").

[8] *See Traffic Server, Large Scale Network Caches Provide More Bandwidth for Your Money*, Inktomi Corporation White Paper at 2, 1997 (http://www.inktomi.com/Tech/EconOfLargeScaleCache.html).

[9] *Id.*; *See also*, United States Department of Commerce *The Emerging Digital Economy* at 8, April 1998

which drive economic commerce. In a recent report authored by Legg Mason the need for additional bandwidth capacity is made clear:

> ***The Internet ... has created the need for significant bandwidth to support the high level of data required for multimedia-rich, interactive Internet connections. While the backbone of the information superhighway has been upgraded ... the on/off ramps are still a major point of congestion. Standard modem rates have increased from 300 bits per second (bps) in 1980 to 56,600 bps today, but this still remains inadequate for the transmission of graphics and detailed content. This is the so-called 'last mile problem,' which deals with the cooper local loops that connect user sites to the local or regional networks. The telecommunications infrastructure, which is based on twisted-pair copper wires that were designed for voice transmission and only limited data transmission, does not have the capacity for high-speed data transmission needed to support the projected level of Internet usage. Thus, limited bandwidth becomes a potential barrier for electronic commerce.***[10]

The sustained economic and technological advantage of domestic companies depends upon greater, not lesser, deployment of advanced telecommunications networks and services. According to Legg Mason's Precursor research:

> ***While billions of dollars of shareholder wealth has been created in Internet stocks in just a few years, the biggest wealth creation story may be in the rest of the $7 Trillion economy that uses the Internet. The Internet changes the basic way businesses build and distribute products, and buyers consume them. Internet technology changes how businesses identify customer needs, develop products, market to distinct segments, integrate suppliers, build products with less waste, distribute quickly and cheaply, and serve customers. In short, the Internet changes business models that companies use to earn profits by satisfying***

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[10] *See* Legg Mason Equity Research, *Electronic Commerce Investing for the New Millennium* at 43, April 1998

customer needs.[11]

It its report on worldwide communications trends, British Telecommunications ("BT") noted the explosive growth of the Internet and the economic and technological advantages enjoyed by the United States.[12] According to BT's report, the United States leads the world with more than 70% of its corporations on line, and between 60-70 % of domestic corporations operating intranets, with 25% of North American companies also operating extranets.[13] In addition, BT's report noted that the number of Internet sites is doubling each year in the United States.[14]

Beyond the rhetoric of competitors seeking government protections from competition, the data establishes that the need for high-speed, advanced data and Internet networks and services exceeds current capacity. Similarly, the economic and technological edge enjoyed by domestic corporations as they compete in global markets is placed at risk because of Commission policy that rewards bald claims and allegations of monopoly control by ILECs. The Commission's regulations create disincentives for infrastructure investments by ILECs, while competitors feed at the network trough of ILECs. There are simply no public policy reasons why ILECs should not compete with other competitors to provide the bandwidth capacity, transmission links and

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[11] *See* Whyman, Bill, *Net Impact, Guide to How the Internet Changes the Industries and Companies in Which you Invest* at 6, Legg Mason Precursor Group, Fall 1998.

[12] *See BT World Communications Report 1998/9 The Global Challenge* <http://www.bt.com/global reports/1998-99>.

[13] *Id.*

[14] *Id.*

advanced, high-speed data and Internet services the public demands. USTA urges the Commission to remove anti-competitive regulations which serve only to stifle competition, limit infrastructure investments, forestall the delivery of advanced telecommunications services to rural and small communities, and create artificially higher prices for access by the public to existing high-speed data and Internet networks and services.

III. UNFOUNDED FEARS OF ILEC MONOPOLY CONTROL OF DATA AND INTERNET MARKETS IS NOT SUPPORTED BY THE EVIDENCE

Government regulations to curb potential ILEC monopoly control of data and Internet markets is often cited by competitors as justification for seeking government sanctioned protection from ILEC competition. Typical of such unsupported arguments are AT&T's comments which proclaim that ILECs are impeding the growth of advanced telecommunications networks and services by not complying with Section 251 requirements of the Act.[15] Contrary to conventional wisdom, the record makes clear that competitors, not ILECs control the data and Internet markets.[16]

MCI/Worldconm acknowledges that the market for Internet backbone providers has more

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[15] *AT&T Comments* at 26-36.

[16] Merrill Lynch reports that "2Q results for the CLEC sector continued to show strong revenue growth ... up 60% year over year and 36% sequentially, led by strong data and dedicated services revenue." *See* Merrill Lynch *Telecom Services - Local Report* at 5, September 22, 1998. Salomon Smith Barney telecommunications analysts predict that CLECs will exceed 50% market share of the local exchange market well ahead of the period of time it took MCI, Sprint, and other competitors of AT&T to reach such results in the IXC market. *See* Grubmann/McMahon, *Review of First Quarter CLEC and RBOC Line Growth*, May 6, 1998.

than 40 competitors.[17] The Antitrust Division of the Department of Justice ("DoJ") recently approved the MCI/WorldCom merger after requiring the largest merger divestiture in history. In mandating that MCI divest its estimated $1.75 billion value Internet business, purchased by Cable and Wireless, the DoJ expressed its concern about the worldwide monopoly over the Internet backbone by MCI/WorldCom:

> ***The merger as originally proposed would have given WorldCom/MCI a significant proportion of the nation's Internet traffic, giving the company the ability to cut off or reduce the quality of Internet services that it provided to its rivals.... This divestiture benefits anyone who relies on the Internet because it preserves competition among major Internet service providers. Consumer will benefit with lower prices, higher quality, and greater innovation ....***[18]

The growth in ISP providers also reflects the dominance of competitors, not ILECs, serving that market. In the recent report on cable and the Internet by the Commission's Office of Plans and Policy, the author noted the following:

> ***By mid-1997, there were more than 3,700 ISPs in North America alone. More recent estimates indicate that the number of local and regional ISPs has grown to over 4,800. At one point, collectively, the 'Big Four' online service Companies - - America Online, Inc. ("AOL"), CompuServe (CompuServe was later acquired by AOL), Microsoft Corp, and Prodigy, Inc. - - served 84% of the total audience. Including AT&T Corp's 'WorldNet' (the largest so-called 'pure' Internet access provider) into a 'Big Five' takes the collective total market share of these entities up to 88%, and underscores the increasing contribution of Internet***

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17 *MCI/WorldCom Comments* at 20.

18 Department of Justice Press Release at 1-2, July 15, 1998, http://www.usdoj.gov/atr/public/press_releases/1998/1829.htm>

access services to the overall online services sector.[19]

The competitive dominance of non-ILECs in the Internet backbone and ISP markets is demonstrable evidence that they, not ILECs, exhibit market power and monopoly control. Moreover, non-ILEC monopoly control of the data and Internet markets was achieved not withstanding the baseless arguments that ILECs are impeding competition in the very markets that AT&T, MCI/WorldCom/UUNET, QWEST, Level 3, American Online and others dominate.

CONCLUSION

The data and Internet markets are competitive. These markets are also dominated and control by those competitors who seek to undermined the pro-competitive, deregulatory intent of the Act for the self-indulgent interest of maintaining a competitive advantage in the data and Internet markets by monopoly control of these markets through Commission regulations that impair the ability of ILECs to compete on a regulatory and competitively neutral basis. The winners thus far are those entities which seek to hide from competition. Conversely, the public subsidizes these companies by paying higher prices for access to advanced telecommunications networks and services, with the concomitant fewer choices.

Market forces, not government regulations, must drive competition. The Commission can provide incentives for more, not less, competition by permitting ILECs to operate in the same regulatory environment as its competitors. Otherwise, the Commission's legacy may be

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[19] *See* Esbin, Barbara, *Internet Over Cable: Defining the Future in Terms of the Past*, OPP Woking Paper Series No. 30 at 19, August 1998.

that of past Commission's who labored mightily to regulate competition for cellular and voice messaging services with the result being years of regulatory induced delay in the public's access to such services with estimated losses for cellular services as high as $100 billion.[20]

The public should not be presented with a bill that amounts to an implicit subsidy for well-financed, often publicly traded, dominate providers of high-speed data and Internet services. Avoiding similar onerous results in the data and Internet markets, based upon misguided Commission policy, can be achieved by permitting ILECs the same unfettered investment opportunities, on a competitively and regulatory neutral basis as their competitors now do business, to invest in the nation's telecommunications infrastructure and reap the rewards, or experience the failures, that only a competitive market can and should provide. USTA urges the Commission to exercise the independent forbearance authority in Section 706 to achieve the benefits of competition intended by the Act.

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[20] *USTA Comments* at 7-10.

Respectfully submitted,

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I, Donna Young, do certify that on October 8, 1998, copies of the accompanying Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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